



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,714	09/04/2003	Doyle W. Eakin	RAR471.01	8261

7590 09/28/2004

Richard A. Ryan
RYAN & ENGNATH
Suite 104
8469 N. Millbrook
Fresno, CA 93720

EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,714

Applicant(s)

EAKIN, DOYLE W.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11, 12, 13-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding the statement in the claims 11, 13, and 18, and the description on page 19, second paragraph of the specification, 'said one or more stabilizer members sized and configured to generally support the center of said bottom higher than the periphery of said bottom', it is unclear what and how the bottom is higher than the periphery merely by the center rings being of a greater length than the outer rings. Even upon reviewing the figures it is unclear how the bottom could possibly be higher than the periphery.

Claims 12, 14-17, and 19-21 are rejected as being dependent from a rejected base claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said inlet of said orifice" in line 8 of the claim 1. There is insufficient antecedent basis for this limitation in the claim.

Claims 1-12 are rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 10-15, 17-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,428,487 to Loudon.

Regarding Claim 1, Loudon teaches a drainage tray (Fig. 2 #9) for draining plant treating fluids from a plant pot (#8) having a drainage hole (#13) in a bottom portion thereof, comprising: a base member having a bottom with one or more side walls extending generally vertically upward from the periphery thereof, said bottom and said one or more side walls forming a reservoir in said base member for the collection of the fluids from the plant pot (Fig. 1), said reservoir having a generally open top portion, said bottom of said base member having an upwardly facing surface and a downwardly facing surface said upwardly facing surface configured to be generally concave to facilitate flow of the fluids in said reservoir to said inlet of said orifice (Fig. 1 #10 and 12);

a drainage orifice in said base member, said drainage orifice having an inlet disposed in said reservoir and an outlet disposed outside of said reservoir; and a tubular member connected to said drainage orifice to receive the fluids from said reservoir through said outlet of said drainage orifice (#14).

Regarding Claim 3, Loudon teaches said upwardly facing surface of said bottom has one or more upper supports (#11) extending generally upwardly from said bottom to support the plant pot a spaced distance above said bottom of said base member.

Regarding Claim 4, Loudon teaches said one or more upper supports comprises a plurality of ribs (#11) in spaced apart relation.

Regarding Claim 5, Loudon teaches wherein said ribs are generally inclined downward toward the center of said bottom (Fig. 1 #11).

Regarding Claim 6, Loudon teaches wherein said one or more upper supports are sized and configured to substantially allow flow of the fluids in said reservoir to said drainage orifice (Fig. 1).

Regarding Claim 7, Loudon teaches wherein said drainage orifice is integral with said base member (Fig. 1 #13).

Regarding Claim 10, Loudon teaches said drainage orifice comprises a connector (#14) disposed in said base member, said connector configured to interconnect said reservoir (#13) with said tubular member (Bottom of element #14) to drain the fluids from said reservoir.

Regarding Claims 11, 12-15, 17-19 and 21, Loudon teaches wherein said downwardly facing surface of said bottom comprises one or more stabilizer members

Art Unit: 3643

(Fig. 1 portion of #9 extending below #10) extending generally downward from said bottom of said base member; said one or more stabilizer members sized and configured to generally support the center of said bottom higher than the periphery of said bottom (Fig. 1 bottom portion of #7 is the second inner stabilizer).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,428,487 to Loudon in view of U.S. Patent No. 6,047,499 to Staas.

Regarding Claims 8, 16, and 20, Loudon is silent on said drainage orifice being disposed in one or said one or more side walls of said base member, said outlet of said drainage orifice extending outwardly from said base member. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of invention since the modification is merely the shifting location of a known element performing the same intended function. Staas teaches that it is old and notoriously well-known to place the drainage orifice on the side of the base member (Staas Fig. 2). The motivation may be inflicted by particular size constraints or configurations that optimize and create an efficient use of space. [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70,73 (CCPA 1950)].

Regarding Claim 9, Loudon as modified teaches wherein said drainage orifice is at or substantially near the bottom of said side wall to fully drain the fluids from said reservoir (Staas Fig. 2 #43).

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 2,072,185 and U.S. Patent No. 4,833,823.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

22 September 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600